

**2009 DRAFTING REQUEST**

**Bill**

Received: **03/09/2009**

Wanted: **As time permits**

For: **Jim Holperin (608) 266-2509**

This file may be shown to any legislator: **NO**

May Contact:

Subject: **Local Gov't - munis generally**  
**Local Gov't - zoning**

Submit via email: **YES**

Requester's email: **Sen.Holperin@legis.wisconsin.gov**

Carbon copy (CC:) to:

Received By: **mshovers**

Identical to LRB:

By/Representing: **Ian Shannon-Bradley**

Drafter: **mshovers**

Addl. Drafters:

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Limit use of direct annexation by unanimous approval to town land that borders a city or village

**Instructions:**

See attached. AM; s. 66.0217 (2) to require that the annexed land must be contiguous to the city or village, and AM s. 66.0217 (11) (c) to allow a town challenge but only the issue of contiguity.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							S&L
/1	mshovers 03/09/2009	nnatzke 03/11/2009	rschluet 03/13/2009		mbarman 03/13/2009	sbasford 03/23/2009 sbasford 03/23/2009	

FE Sent For: @intro. 4/23/09

*Re-jacketed  
/1 to get new labels*

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/?	mshovers	11 nwn 3/9					
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11 nws 3/9/09

FE Sent For:

<END>

## Shovers, Marc

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**From:** Shannon-Bradley, Ian  
**Sent:** Thursday, March 05, 2009 4:12 PM  
**To:** Shovers, Marc  
**Subject:** Info for Bill Draft

**Attachments:** Memo explaining Merrimac case holding and amendments.doc

Marc,

Attached is the memo that explains some of the background and the proposed amendments. Thank you for your help.

Ian



Memo explaining  
Merrimac case ...

**Ian Shannon-Bradley**  
Office of State Senator Jim Holperin  
12th Senate District  
409 South, State Capitol  
Madison, WI 53701-7882  
ian.shannon-bradley@legis.wisconsin.gov  
(608)266-2509

# **Wisconsin Towns Association**

**Richard J. Stadelman, Executive Director**

**W7686 County Road MMM**

**Shawano, Wis. 54166**

**Tel. (715) 526-3157**

**Fax (715) 524-3917**

**Email: wtowns1@frontiernet.net**

To: Whom it may concern

From: Richard J. Stadelman

Re: Standing of Town to Challenge Direct Unanimous Annexation on Contiguity

Date: January 5, 2009

The purpose of this memo is to give the background on issue of town legal standing to challenge a unanimous annexation on the grounds it is not contiguous to a city or village.

It has been well established law that "direct annexations by unanimous approval" under current Sec. 66.0217 (2) of Wis. Statutes that the annexed land must be contiguous to the city or village. {See page 4 of attached Town of Lyons v. City of Lake Geneva, 56 Wis. 2d 331, 202 N.W. 2d 228, (1973) citing cases back to 1957.} Many cases have analyzed whether the land was "contiguous" and what is meant by "contiguous."

2003 Wis. Act 317 amended Sec. 66.0217 (11)(c) to state as follows:

*"No action on any grounds, whether procedural or jurisdictional, to contest the validity of an annexation under subsection (2) may be brought by the town."*

In the case of Town of Merrimac v. Village of Merrimac, Wis. 2d , 753 N.W. 2d 552, No. 2007AP2491 the District IV Court of Appeals on May 22, 2008 held the Town of Merrimac had not legal standing to challenge whether the annexation in this case was "contiguous because of Sec. 66.0217 (11)(c) of Wis. Statutes. The town had alleged the annexed land was not contiguous to the village. {See copy of court of appeals decision attached.}

The result of this ruling is that there may be no legal recourse anyone to an a unanimous annexation even if the proposed annexed land is not contiguous to the city or village and may even be 100 feet, 1,000 feet, one half mile, or even further away from the city or village.

Wisconsin Towns Association asks that Sec. 66.0217 (2) be amended to clarify that all unanimous annexations must be contiguous to the city or village. Further that Sec. 66.0217 (11) be amended that the town may not challenge a unanimous annexation under subsection (2) of Sec. 66.0217 except to challenge whether the annexed land is contiguous to the city or village.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2329/7

MES.....f.....  
nun (FMR)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-NOTE

SAV  
x-refv

gm

- 1 AN ACT ...; **relating to:** limiting a city's and village's use of direct annexation and
- 2 authorizing limited town challenges to an annexation.

---

***Analysis by the Legislative Reference Bureau***

Currently, town territory that is contiguous to any city or village may be annexed to that city or village under several methods if, in general, some of the city's or village's territory is in the same county as the territory to be annexed, unless both the town and county boards approve of the proposed annexation, and the city or village agrees to make limited payments to the town based on property taxes that the town levied on the annexed territory.

Three of the methods of annexation include the following: 1) direct annexation, under which a petition for annexation that was signed by the required number of electors and landowners is filed with the city or village clerk; 2) annexation by referendum, under which a petition for referendum that was signed by the required number of electors and landowners is filed with the city or village clerk, and a referendum is held and passes in the town; and 3) annexation by court order and referendum, under which the governing body of a city or village adopts a resolution declaring its intention to apply to the circuit court for an order for an annexation referendum.

Another method of annexation is direct annexation by unanimous approval. If a petition for direct annexation by unanimous approval signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk and the town clerk of all of the involved towns, along with a scale map and legal description of the property to be annexed, the governing

Department of  
Administration  
advisory

body of the city or village may, generally, annex the property by a two-thirds vote of the body. Such an annexation, however, is subject to DOA review as if the annexation petition were for direct, but not unanimous, annexation or annexation by referendum.

Generally, cities and villages may also annex territory that is owned by the city or village and that lies near but not necessarily contiguous to the city or village by enacting an ordinance to annex such territory.

This bill limits the use of direct annexation by unanimous approval to town land that is contiguous to the annexing city or village. *as well as several other types of annexations*

Under current law, a town may not challenge in court, on any grounds, any direct annexation by unanimous approval. Under this bill, a town may challenge such an annexation, but only on the issue of whether the territory proposed for annexation is contiguous to the annexing city or village. *direct annexation by unanimous approval*

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 66.0217 (2) of the statutes is amended to read:

66.0217 (2) DIRECT ANNEXATION BY UNANIMOUS APPROVAL. Except as provided in this subsection and sub. (14), and subject to ss. 66.0301 (6) (d) and 66.0307 (7), if a petition for direct annexation signed by all of the electors residing in the territory and the owners of all of the real property in the territory is filed with the city or village clerk, and with the town clerk of the town or towns in which the territory is located, together with a scale map and a legal description of the property to be annexed, an annexation ordinance for the annexation of the territory may be enacted by a two-thirds vote of the elected members of the governing body of the city or village without compliance with the notice requirements of sub. (4). In an annexation under this subsection, subject to sub. (6), the person filing the petition with the city or village clerk and the town clerk shall, within 5 days of the filing, mail a copy of the scale map and a legal description of the territory to be annexed to the department and the governing body shall review the advice of the department, if any, before

as well as several other types of annexations including annexation by referendum initiated by a city or village, and annexation of city-owned or village-owned territory



- 1 enacting the annexation ordinance. No territory may be annexed by a city or village  
2 under this subsection unless the territory to be annexed is contiguous to the  
3 annexing city or village.

History: 1973 c. 37, 90, 143, 333; 1977 c. 29 ss. 698, 1654 (8) (c); 1977 c. 187 s. 134; 1977 c. 315, 447; 1979 c. 323; 1979 c. 361 s. 112; 1983 a. 29, 189, 219; 1985 a. 225; 1987 a. 391; 1989 a. 192; 1991 a. 5, 39, 269, 316; 1993 a. 16, 247, 301, 329, 491; 1995 a. 27 ss. 3308 to 3312, 9116 (5), 9145 (1); 1995 a. 201, 225; 1997 a. 27; 1999 a. 96; 1999 a. 150 ss. 44 to 47, 49 to 60, 63 to 65; Stats. 1999 s. 66.0217; 1999 a. 182 s. 197; 2001 a. 16, 30; 2003 a. 171, 317, 327; 2007 a. 43.

- 4 **SECTION 2. 66.0217 (11) (c) of the statutes is amended to read:**

- 5 66.0217 (11) (c) No Except for an action relating to the issue of whether the  
6 territory to be annexed is contiguous to the annexing city or village, no action on any  
7 grounds, whether procedural or jurisdictional, to contest the validity of an  
8 annexation under sub. (2), may be brought by any town.

History: 1973 c. 37, 90, 143, 333; 1977 c. 29 ss. 698, 1654 (8) (c); 1977 c. 187 s. 134; 1977 c. 315, 447; 1979 c. 323; 1979 c. 361 s. 112; 1983 a. 29, 189, 219; 1985 a. 225; 1987 a. 391; 1989 a. 192; 1991 a. 5, 39, 269, 316; 1993 a. 16, 247, 301, 329, 491; 1995 a. 27 ss. 3308 to 3312, 9116 (5), 9145 (1); 1995 a. 201, 225; 1997 a. 27; 1999 a. 96; 1999 a. 150 ss. 44 to 47, 49 to 60, 63 to 65; Stats. 1999 s. 66.0217; 1999 a. 182 s. 197; 2001 a. 16, 30; 2003 a. 171, 317, 327; 2007 a. 43.

- 9 **SECTION 3. Initial applicability.**

- 10 (1) This act first applies to any annexation that commences on the effective date  
11 of this subsection.

- 12 (END)

O-NOTE  
Date

-2329/1dn  
MES:nwn:

Senator Holperin:

The change in 66.0217 (11) (c) will also  
affect annexations ~~and boundary matters~~ under  
ss. 66.0219, 66.0221, 66.0223, and 66.0250 Is this  
consistent with your intent?

MZL

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2329/1dn

MES:nwn:rs

March 11, 2009

Senator Holperin:

The change in s. 66.0217 (11) (c) will also affect annexations under ss. 66.0291, 66.0221, 66.0223, and 66.0225. Is this consistent with your intent?

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**Parisi, Lori**

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**From:** Meinholz, Susan  
**Sent:** Monday, March 23, 2009 11:57 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-2329/1 Topic: Limit use of direct annexation by unanimous approval to town land that borders a city or village

Please Jacket LRB 09-2329/1 for the SENATE.